

BEFORE **THE** STATE BOARD OF EQUALIZATION  
OF **THE** STATE OF CALIFORNIA

In the Matter of the Appeal of    }  
**EDDIE AND BESSIE GALLARDO**        }

Appearances:

For Appellants:   Eddie **Gallardo**,  
                          in pro. per.

For Respondent:   Charlotte A. Meisel  
                          Counsel

O P I N I O N

**This** appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Eddie and Bessie Gallardo against proposed assessments of additional personal **income tax** in the amounts of \$80.56, \$142.48, \$202.20, and \$318 for the years 1976, 1977, 1978, and 1979, respectively.

Appeal of Eddie and Bessie Gallardo

The issue is whether appellants have adequately substantiated the itemized deductions disallowed by respondent.

Appellants admittedly estimated the amounts of their itemized deductions on their personal income tax returns filed for the years in question. Auditing the returns, respondent requested substantiation of the amounts deducted. After a period of time, respondent disallowed the deductions to the extent appellants had not substantiated them and issued **notices** of tax proposed to be assessed. Appellants protested and offered some additional substantiation. Respondent issued its notices of action with the assessments revised downward to the extent supported by the additional substantiation. Appellants disagreed with respondent's determinations and **filed** this appeal. Since **filing** this appeal, appellants have offered some additional substantiation for 1979, which respondent has accepted and will revise the amount of the proposed assessment **for** 1979 accordingly.

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Following is a table showing the years and the types of the originally claimed deductions and the amounts of those deductions still disallowed followed by excerpts from respondent's brief commentary:

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
<u>Item</u>	<u>Amount</u> <u>Disallowed</u>	<u>Amount</u> <u>Disallowed</u>	<u>Amount</u> <u>Disallowed</u>	<u>Amount</u> <u>Disallowed</u>
(A) Employee Business Expenses	\$1,907	<b>\$1,240</b>	\$1,980	\$1,760
(B) Contributions	<b>1,439</b>	1,468	1,486	1,556
(C) Medical Expenses	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
(D) Auto Expense	678	1,571	642	546
(E) Repairs.	989	841	622	334
(F) Interest	-0-	-0-	<b>-0-</b>	<b>-0-</b>
(G) Casualty Doss	212	---	---	477
(H) SDI	<u>195</u>	<u>204</u>	<u>228</u>	<u>228</u>
Total Amount Disallowed	<u><u>\$5,420</u></u>	<u><u>\$5,324</u></u>	<u><u>\$4,958</u></u>	<u><u>\$4,901</u></u>

(A) Employee Business Expenses

Appellants claimed various employee business expenses for travel, meals, lodging, phone, and small **tools**. Nothing was submitted to substantiate these expenses either at audit or at the protest hearing.

(B) Contributions

Appellants claimed charitable contributions averaging \$1,549 for each of the four subject years. Appellants, prior to appeal, submitted receipts documenting contributions at approximately \$60 per year.

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(C) Medical Expenses

**Claimed** medical expenses were fully substantiated for all four of the years.

(D) Auto Expense

Appellants claimed auto expenses averaging **\$2,045** for each of the four years. Appellants have been given the benefit of a **\$.20** per mile rate for auto expenses relating to their rental property.

(E) Repairs

Appellants claimed an average of **\$696** for repairs to rental property for each of the four subject years. Other than for a **\$36** expense for 1979, nothing has been submitted to substantiate these expenses.

(F) Interest

Claimed interest expenses were fully substantiated for all four of the subject years.

(G) Casualty Loss

For 1976, appellants claimed a casualty loss of \$212 arising from an **automobile** accident that year. Nothing has been submitted to substantiate this claimed loss.

For 1979 appellants claimed a casualty loss of \$477 stemming from a burglary of their home. The claimed loss is the difference between the cost and the fair market value of the stolen items. The deduction for this loss was disallowed because appellants improperly calculated the amount of loss. A casualty loss is limited to the decrease in fair market value or the adjusted basis, whichever is less. No information has been submitted on either of these items.

(H) SDI

Appellants deducted payments to the State Disability Insurance Fund (SDI) for each of the four subject years. Respondent disallowed these deductions because, under California law, a deduction is not allowed for income taxes. **SDI** has been construed as an income tax. This is the only adjustment with which appellants agree.

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It is well established that deductions are a matter of legislative grace. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 (78 L.Ed. 1348] (1934).) Respondent's determination that a deduction should be disallowed is presumed correct, and the burden is on the taxpayer to show by competent evidence that he is entitled to the deductions claimed. (Appeal of Robert V. Erilane, Cal. St. Bd. of Equal., Nov. 12, 1974; Appeal of James C. and Monablanche A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975.) With the exception of the **SDI** deduction, each of the remaining disallowed deductions **failed** for lack of substantiation. As to the still disallowed amounts, appellants offer only their stated belief that the amounts were correctly and properly deductible. But their belief is insufficient to carry their burden of proof by concretely demonstrating to us the correctness **and deductibility** of each claimed but disallowed amount. (Appeal of Richard A. and Susan K. Smith, Cal. St. Bd. of Equal., Jan. 31, 1984,) Since appellants have not met the required burden of proof, we must sustain respondent's action as modified by its concession.

# Appeal of Eddie and Bessie Gallardo

O. R D E R

Pursuant to 'the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

**IT** IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Eddie and Bessie Gallardo against proposed assessments of additional personal income tax in the amounts of \$80.56, \$142.48, \$202.20, and \$318 for the years 1976, 1977, 1978, and 1979, respectively, be and the same is hereby modified in accordance with respondent's concession. In all other respects, respondent's action is sustained,

Done at Sacramento, California, **this 9th day of April, 1985**, by the State Board of Equalization, with Hoard Members **Mr. Dronenburg, Mr. Collis, Mr. Nevins** and Mr. **Harvey** present-

Ernest J. Dronenburg, Jr., Chairman

Conway H. Collis, Member

Richard Nevins, Member

Walter Harvey\*, Member

\_\_\_\_\_, Member

\*For Kenneth Cory, per Government Code section 7.9